

STATE OF MICHIGAN  
COURT OF APPEALS

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BONNIE JEAN SCHOBBER,

Plaintiff-Appellant,

v

CARL ROBERT SCHOBBER,

Defendant-Appellee.

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UNPUBLISHED

June 29, 1999

No. 213849

Allegan Circuit Court

LC No. 93-015857 DM

Before: Cavanagh, P.J., and Hoekstra and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting physical custody of the parties' minor daughter to defendant. We affirm.

On appeal, plaintiff argues that the trial court erred in granting custody of the child to defendant, despite the existence of an established custodial relationship with plaintiff. This Court reviews the trial court's findings of fact in a custody matter under the great weight of the evidence standard, the court's discretionary rulings for a palpable abuse of discretion, and the court's rulings on issues of law for clear legal error. *Winn v Winn*, 234 Mich App 255, 262; \_\_\_ NW2d \_\_\_ (1999). We review the trial court's ultimate custody award for an abuse of discretion. *Hilliard v Schmidt*, 231 Mich App 316, 321; 586 NW2d 263 (1998).

Because the child's established custodial environment was with plaintiff, the trial court could change custody under MCL 722.27(1)(c); MSA 25.312(7)(1)(c) only if clear and convincing evidence established that the change was in the child's best interest. See *Winn, supra* at 262-263. Defendant, as the party seeking a change in custody, had the burden of establishing by clear and convincing evidence that a change of custody is in the best interests of the child. See *Treutle v Treutle*, 197 Mich App 690, 692; 495 NW2d 836 (1992). Whether defendant has met this burden turns on the trial court's findings regarding the statutory best interest factors set forth in MCL 722.23; MSA 25.312(3). The trial court need not, however, give the statutory factors equal weight, and its finding regarding one factor does not necessarily countervail its other findings. See *Winn, supra* at 263.

Plaintiff does not challenge any of the trial court's specific findings on the statutory best interest factors. Instead, plaintiff contends that the trial court was more interested in "vilifying and punishing" her for cohabitating with Kevin Flexman without the benefit of marriage than in determining the child's best interests. We disagree. The trial court did not base its decision solely on the fact that plaintiff had lived with a man to whom she was not married. Rather, the court properly considered how plaintiff's living arrangements affected her children.<sup>1</sup> See *Fletcher v Fletcher*, 447 Mich 871, 887; 526 NW2d 889 (1994). The court found that Flexman was an unsuitable person for young children to be exposed to and that plaintiff continued her relationship with him even after she became aware that he was jeopardizing the financial stability of her family. These findings are not against the great weight of the evidence.

Furthermore, the court believed that plaintiff's judgment was deficient, as evidenced by the facts that she allowed Flexman to use her credit cards, which he charged to the limit; she squandered the money she received after the divorce on a sailboat, which was subsequently repossessed, instead of a house or savings account for her children; after learning that Flexman had sexually molested her daughter, she inappropriately involved the child in an attempt to get Flexman to admit his misconduct; and she continued to see Flexman, even after his incarceration for molesting his own daughter, for reasons that the court did not find credible. The trial court was also critical of plaintiff for leaving the child home alone, on more than one occasion, when the girl had been ill.

The trial court acknowledged that plaintiff and the child shared a close bond and that "in spite of all that's happened [the child]'s a pretty good kid." However, the court found that plaintiff had not provided her daughter with a stable, satisfactory environment. While the court recognized that defendant's conduct had not been flawless, it concluded that the evidence was clear and convincing that defendant would be best able to protect the child and to give her proper guidance. After reviewing the record, we are not persuaded that the trial court erred in finding clear and convincing evidence that the custody change was in the child's best interest or that it abused its discretion in awarding custody to defendant. See *Hilliard, supra*; *Treutle, supra*.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Joel P. Hoekstra

/s/ Hilda R. Gage

<sup>1</sup> Defendant did not seek a change in custody with regard to the parties' adolescent son, Joshua.